



This document is scheduled to be published in the Federal Register on 12/04/2015 and available online at <http://federalregister.gov/a/2015-30460>, and on FDsys.gov

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 2005-85; FAR Case 2015-009; Item V; Docket No. 2015-0009,
Sequence No. 1]

RIN 9000-AN12

Federal Acquisition Regulation; Retention Periods

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to update the Government contract file retention periods to conform with the retention periods in the National Archives and Records Administration (NARA) General Records Schedule.

DATES: Effective: [Insert date 30 days after publication in the FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, at 202-501-1448, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-85, FAR Case 2015-009.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing a final rule to update the Government file retention periods identified at FAR 4.805, Government contract files, to conform with the retention periods in the revised NARA General Records Schedule (GRS) 1.1, Financial Management and Reporting Records notice, which was published in the Federal Register at 79 FR 54747 on September 12, 2014. The Financial Management and Reporting Records can be found at <http://www.archives.gov/records-mgmt/grs.html>.

NARA has undertaken a 5-year project to redraft the entire GRS to reflect the realities of current Government business practices and make it more useful in a world where almost all record keeping is electronic. NARA is charged with oversight of how all records of the Federal Government are managed and retained for business use and historical research. Its research on writing a new schedule for Financial Management and Reporting Records (GRS 1.1) was carried out under that authority.

NARA's research has shown that many agencies believe the break between procurements over and under the simplified acquisition threshold (6 years, 3 months versus 3 years retention) is no longer useful to them. NARA polled records management personnel at numerous agencies regarding records created in largely electronic acquisition systems. It also examined and tallied statistics regarding some 675,000 boxes

of hard-copy records stored in the Federal Records Center system. As such, NARA eliminated the distinction between over and under the simplified acquisition threshold for purposes of record keeping and unified all retention under a single figure of 6 years under GRS 1.1, item 010.

The retention periods for Government contract records at FAR section 4.805 is changed to conform to the revised NARA GRS 1.1, as follows:

- Language at paragraph (a) regarding agency procedures for contract file disposal is removed.
- Language at paragraph (b) regarding retention periods for acquisitions conducted prior to July 3, 1995 is removed.
- Language is added at a new paragraph (c) to require agencies to request approval from NARA through the agency's records officer if a shorter retention is needed.
- In the Table at 4-1:
 - o The retention period identified for records related to Contract Disputes statute actions is removed; the requirement is covered by paragraphs numbered (1) and (8).
 - o The retention period for all contracts and related records is changed to 6 years after final payment.
 - o The retention period for unsolicited proposals not accepted by the agency is changed to be in accordance with agency procedures.

II. Publication of this final rule for public comment is not required by statute

"Publication of proposed regulations", 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only changes the retention periods for Government contract files. These requirements affect only the internal operating procedures of the Government.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs

and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subject in 48 CFR Part 4

Government procurement.

Dated: November 20, 2015.

William Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as set forth below:

PART 4—ADMINISTRATIVE MATTERS

1. The authority citation for 48 CFR part 4 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

2. Revise section 4.805 to read as follows.

4.805 Storage, handling, and contract files.

(a) Agencies must prescribe procedures for the handling, storing, and disposing of contract files, in accordance with the National Archives and Records Administration (NARA) General Records Schedule 1.1, Financial Management and Reporting Records. The Financial Management and Reporting Records can be found at <http://www.archives.gov/records-mgmt/grs.html>. These procedures must take into account documents held in all types of media, including microfilm and various electronic media. Agencies may change the original medium to facilitate storage as long as the requirements of Part 4, law, and other regulations are satisfied. The process used to create and store records must record and reproduce the original document, including signatures and other written and graphic images completely, accurately, and clearly. Data transfer, storage, and retrieval procedures must

protect the original data from alteration. Unless law or other regulations require signed originals to be kept, they may be destroyed after the responsible agency official verifies that record copies on alternate media and copies reproduced from the record copy are accurate, complete, and clear representations of the originals. When original documents have been converted to alternate media for storage, the requirements in Table 4-1 of this section also apply to the record copies in the alternate media.

(b) If administrative records are mixed with program records and cannot be economically segregated, the entire file should be kept for the period of time approved for the program records. Similarly, if documents described in the following table are part of a subject or case file that documents activities that are not described in the table, they should be treated in the same manner as the files of which they are a part.

(c) An agency that requires a shorter retention period than those identified in Table 4-1 shall request approval from NARA through the agency's records officer.

TABLE 4-1-RETENTION PERIODS

| Record | Retention Period |
|---|------------------------------|
| (1) Contracts (and related records or documents, including successful and unsuccessful proposals, except see paragraph (c)(2) of this | 6 years after final payment. |

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| section regarding contractor payrolls submitted under construction contracts). | |
| (2) Contractor's payrolls submitted under construction contracts in accordance with Department of Labor regulations (29 CFR 5.5(a)(3)), with related certifications, anti-kickback affidavits, and other related records. | 3 years after contract completion unless contract performance is the subject of an enforcement action on that date (see paragraph (c)(8) of this section). |
| (3) Unsolicited proposals not accepted by a department or agency. | Retain in accordance with agency procedures. |
| (4) Files for canceled solicitations. | 6 years after cancellation. |
| (5) Other copies of procurement file records used for administrative purposes. | When business use ceases. |
| (6) Documents pertaining generally to the contractor as described at 4.801(c)(3). | Until superseded or obsolete. |
| (7) Data submitted to the Federal Procurement Data System (FPDS). Electronic data file maintained by fiscal year, containing unclassified records of all procurements exceeding the micro-purchase threshold, and information required under 4.603. | 6 years after submittal to FPDS. |
| (8) Investigations, cases pending or in litigation (including protests), or similar matters (including enforcement actions). | Until final clearance or settlement, or, if related to a document identified in paragraphs (c)(1) through (7) of this section, for the retention period specified for the related document, whichever is later. |

[BILLING CODE 6820-EP]

